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10 NMS Properties, Inc.; NMS Capital Partners
I, LLC; Neil Shekhter; and Margot Shekhter
11

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

14
15 MARKEL AMERICAN INSURANCE
COMPANY, a Virginia corporation,

16 Plaintiff,

17 v.

18 NMS PROPERTIES, INC., *et al.*,

19 Defendants.

20
21 NMS PROPERTIES, INC., *et al.*,

22 Counter-Claimants,

23 v.

24
25 MARKEL AMERICAN INSURANCE
COMPANY, a Virginia corporation.

26 Counter-Defendant.

27
28 **CASE NO. 2:17-cv-03309-RGK-SS**

**ANSWER TO COMPLAINT;
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

Assigned to the Hon. R. Gary Klausner

Action Filed: May 2, 2017

1 Defendants NMS Properties, Inc. (“NMS Properties”); NMS Capital Partners
 2 I, LLC (“NMS Capital Partners”); Neil Shekhter; and Margot Shekhter (collectively,
 3 “Defendants”) hereby respond to the Complaint of Plaintiff Markel American
 4 Insurance Company (“MAIC”) as follows:

5 1. Defendants admit that MAIC purports to bring an action for breach of
 6 contract and declaratory relief against Defendants. Defendants deny that MAIC has
 7 stated a claim for either (or any) form of relief. Except as expressly admitted,
 8 Defendants deny the allegations in paragraph 1.

9 2. Defendants admit that MAIC issued insurance policies to Defendant
 10 NMS Properties, Inc. and that MAIC purports to seek declaratory relief and
 11 damages. Defendants deny that MAIC is entitled to either (or any) form of relief.
 12 Except as expressly admitted, Defendants deny the allegations in paragraph 2.

INTRODUCTION

13 3. Denied.

THE PARTIES, JURISDICTION, AND VENUE

14 4. Defendants lack information sufficient to form a belief as to the truth or
 15 falsity of the allegations in paragraph 4 and therefore deny them.

16 5. Defendant NMS Properties, Inc. admits that it is a California
 17 Corporation, that it has an office at 1430 5th Street, Suite 101, Santa Monica,
 18 California, 90401, is privately owned, and manages properties in Los Angeles. The
 19 remaining allegations in paragraph are legal conclusions or statements of opinion to
 20 which no response is required. To the extent a response is deemed necessary,
 21 Defendant NMS Properties, Inc. lacks information sufficient to form a belief as to
 22 the truth or falsity of the allegations in paragraph 5 and therefore denies them.
 23 Except as expressly admitted, Defendants deny the allegations in paragraph 5.

24 6. Defendant NMS Capital Partners I, LLC admits that it is a limited
 25 liability company organized under the laws of California, and that the Statement of
 26 Information referred to in paragraph 6 speaks for itself. The remaining allegations

1 in paragraph 6 are legal conclusions or statements of opinion to which no response
 2 is required. To the extent a response is deemed necessary, Defendant NMS Capital
 3 Partners I, LLC lacks information sufficient to form a belief as to the truth or falsity
 4 of the allegations in paragraph 6 and therefore denies them. Except as expressly
 5 admitted, Defendants deny the allegations in paragraph 6.

6 7. Defendant Neil Shekhter admits that he is an individual residing in Los
 7 Angeles County, California and is the Chief Executive Officer of Defendant NMS
 8 Properties, Inc. The remaining allegations in paragraph 7 are legal conclusions or
 9 statements of opinion to which no response is required. To the extent a response is
 10 deemed necessary, Defendant Neil Shekhter lacks information sufficient to form a
 11 belief as to the truth or falsity of the allegations in paragraph 7 and therefore denies
 12 them. Except as expressly admitted, Defendants deny the allegations in paragraph
 13 7.

14 8. Defendant Margot Shekhter admits that she is an individual residing in
 15 Los Angeles County, California and is the Chief Financial Officer of Defendant
 16 NMS Properties, Inc. The remaining allegations in paragraph 8 are legal
 17 conclusions or statements of opinion to which no response is required. To the extent
 18 a response is deemed necessary, Defendant Margot Shekhter lacks information
 19 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8
 20 and therefore denies them. Except as expressly admitted, Defendants deny the
 21 allegations in paragraph 8.

22 9. Defendants admit the allegations in the first sentence of paragraph 9.
 23 Defendants admit that MAIC has attached what purport to be copies of insurance
 24 policies issued to Defendant NMS Properties, Inc. as Exhibits A and B to its
 25 Complaint, the terms of which (to the extent they are true, correct and complete)
 26 speak for themselves.

27 10. Defendants admit that Exhibit A to the Complaint shows an Aggregate
 28 Limit of Liability for the Directors and Officers and Company Liability Coverage

1 Part of \$3,000,000 and an Aggregate Limit of Liability for the Employment
 2 Practices and Third Party Discrimination Liability Coverage Part of \$3,000,000,
 3 with a Combined Aggregate Limit of Liability of \$6,000,000. Defendants admit
 4 that Exhibit B to the Complaint shows an Aggregate Limit of Liability for the
 5 Directors and Officers and Company Liability Coverage Part of \$3,000,000 and a
 6 Combined Aggregate Limit of Liability of \$3,000,000. Defendants admit that the
 7 Directors and Officers and Company Liability Coverage Part of Exhibits A and B
 8 states a Coverage Part Retention of \$50,000 Each Claim under Insuring Agreements
 9 B and C and a Coverage Part Retention of \$0 Each Claim under Insuring Agreement
 10 A. Defendants admit that Exhibits A and B impose on MAIC a duty to defend.
 11 Except as expressly admitted, Defendants deny the allegations in paragraph 10.

12 11. The allegations in paragraph 11 are legal conclusions or statements of
 13 opinion to which no response is required. To the extent a response is deemed
 14 necessary, Defendants lack information sufficient to form a belief as to the truth or
 15 falsity of the allegations in paragraph 11 and therefore deny them. Except as
 16 expressly admitted, Defendants deny the allegations in paragraph 11.

17 12. The allegations in paragraph 12 are legal conclusions or statements of
 18 opinion to which no response is required. To the extent a response is deemed
 19 necessary, Defendants lack information sufficient to form a belief as to the truth or
 20 falsity of the allegations in paragraph 12 and therefore deny them. Except as
 21 expressly admitted, Defendants deny the allegations in paragraph 12.

22 13. Denied. To the extent paragraph 13 means that subsequent paragraphs
 23 in the Complaint do not contain MAIC's own allegations, but rather reproduce or
 24 characterize others' allegations in other actions, Defendants specifically deny that
 25 MAIC has accurately reproduced or characterized such allegations. To the extent a
 26 response is required to MAIC's characterizations of others' allegations in other
 27 actions, Defendants respond as set forth below.

28 14. Defendants deny that the allegations in paragraph 14 accurately state or

1 characterize the allegations in any complaint or cross-complaint filed against
 2 Defendants in any action. Such complaints and cross-complaints speak for
 3 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 4 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 5 they are its own allegations. To the extent a response is required to MAIC's
 6 characterizations of others' allegations in other actions, Defendants admit that some
 7 of them own and/or manage and/or develop residential properties in Los Angeles.
 8 Defendants lack information sufficient to form a belief as to the truth or falsity of
 9 the remaining allegations in paragraph 14, including in particular who the non-party
 10 "NMS Entities" are), and therefore deny them. Except as expressly admitted,
 11 Defendants deny the allegations in paragraph 14.

12 15. Defendants deny that the allegations in paragraph 15 accurately state or
 13 characterize the allegations in any complaint or cross-complaint filed against
 14 Defendants in any action. Such complaints and cross-complaints speak for
 15 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 16 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 17 they are its own allegations. To the extent a response is required to MAIC's
 18 characterizations of others' allegations in other actions, Defendant Neil Shekhter
 19 admits that he discussed the possibility of a joint venture with a representative of
 20 non-party AEW Capital Management in or about 2010. Defendants lack
 21 information sufficient to form a belief as to the truth or falsity of allegations
 22 pertaining to the "NMS Entities," who are not identified in the Complaint, and
 23 therefore deny such allegations. Except as expressly admitted, Defendants deny the
 24 allegations in paragraph 15.

25 16. Defendants deny that the allegations in paragraph 16 accurately state or
 26 characterize the allegations in any complaint or cross-complaint filed against
 27 Defendants in any action. Such complaints and cross-complaints speak for
 28 themselves. Defendants further deny that MAIC has any proper basis under Rule 11

1 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 2 they are its own allegations. To the extent a response is required to MAIC's
 3 characterizations of others' allegations in other actions, Defendant Shekhter admits
 4 that he and one or more representatives of non-party AEW Capital Management,
 5 L.P. exchanged one or more term sheets regarding a possible joint venture, which
 6 speak for themselves. Defendants admit that the entities P6 LA MF Holdings SPE,
 7 LLC and NMS Capital Partners I, LLC eventually were formed, and that the former
 8 became the so-called "investor member" and the latter the "operating member" of a
 9 joint venture. Except as expressly admitted, Defendants deny the allegations in
 10 paragraph 16.

11 17. Defendants deny that the allegations in paragraph 17 accurately state or
 12 characterize the allegations in any complaint or cross-complaint filed against
 13 Defendants in any action. Such complaints and cross-complaints speak for
 14 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 15 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 16 they are its own allegations. To the extent a response is required to MAIC's
 17 characterizations of others' allegations in other actions, Defendants admit that Mr.
 18 Shekhter and one or more representatives of non-party AEW Capital Management,
 19 L.P. exchanged one or more term sheets regarding a possible joint venture, which
 20 speak for themselves. Except as expressly admitted, Defendants deny the
 21 allegations in paragraph 17.

22 18. Defendants deny that the allegations in paragraph 18 accurately state or
 23 characterize the allegations in any complaint or cross-complaint filed against
 24 Defendants in any action. Such complaints and cross-complaints speak for
 25 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 26 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 27 they are its own allegations. To the extent a response is required to MAIC's
 28 characterizations of others' allegations in other actions, Defendants lack information

1 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18
 2 and therefore deny them. Except as expressly admitted, Defendants deny the
 3 allegations in paragraph 18.

4 19. Defendants deny that the allegations in paragraph 19 accurately state or
 5 characterize the allegations in any complaint or cross-complaint filed against
 6 Defendants in any action. Such complaints and cross-complaints speak for
 7 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 8 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 9 they are its own allegations. To the extent a response is required to MAIC's
 10 characterizations of others' allegations in other actions, Defendants lack information
 11 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 12 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 13 allegations. Except as expressly admitted, Defendants deny the allegations in
 14 paragraph 19.

15 20. Defendants deny that the allegations in paragraph 20 accurately state or
 16 characterize the allegations in any complaint or cross-complaint filed against
 17 Defendants in any action. Such complaints and cross-complaints speak for
 18 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 19 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 20 they are its own allegations. To the extent a response is required to MAIC's
 21 characterizations of others' allegations in other actions, Defendants admit that a
 22 version of a joint venture agreement executed on or about September 8, 2010 speaks
 23 for itself. Except as expressly admitted, Defendants deny the allegations in
 24 paragraph 20.

25 21. Defendants deny that the allegations in paragraph 21 accurately state or
 26 characterize the allegations in any complaint or cross-complaint filed against
 27 Defendants in any action. Such complaints and cross-complaints speak for
 28 themselves. Defendants further deny that MAIC has any proper basis under Rule 11

1 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 2 they are its own allegations. To the extent a response is required to MAIC's
 3 characterizations of others' allegations in other actions, Defendants deny the
 4 allegations in paragraph 21.

5 22. Defendants deny that the allegations in paragraph 22 accurately state or
 6 characterize the allegations in any complaint or cross-complaint filed against
 7 Defendants in any action. Such complaints and cross-complaints speak for
 8 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 9 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 10 they are its own allegations. To the extent a response is required to MAIC's
 11 characterizations of others' allegations in other actions, Defendants Neil and Margot
 12 Shekhter admit that they executed an Undertaking of Principals, the terms of which
 13 speak for themselves. Except as expressly admitted, Defendants deny the
 14 allegations in paragraph 22.

15 23. Defendants deny that the allegations in paragraph 23 accurately state or
 16 characterize the allegations in any complaint or cross-complaint filed against
 17 Defendants in any action. Such complaints and cross-complaints speak for
 18 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 19 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 20 they are its own allegations. To the extent a response is required to MAIC's
 21 characterizations of others' allegations in other actions, Defendants deny the
 22 allegations in paragraph 23.

23 24. Defendants deny that the allegations in paragraph 24 accurately state or
 24 characterize the allegations in any complaint or cross-complaint filed against
 25 Defendants in any action. Such complaints and cross-complaints speak for
 26 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 27 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 28 they are its own allegations. To the extent a response is required to MAIC's

1 characterizations of others' allegations in other actions, Defendants deny the
 2 allegations in paragraph 24.

3 25. Defendants deny that the allegations in paragraph 25 accurately state or
 4 characterize the allegations in any complaint or cross-complaint filed against
 5 Defendants in any action. Such complaints and cross-complaints speak for
 6 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 7 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 8 they are its own allegations. To the extent a response is required to MAIC's
 9 characterizations of others' allegations in other actions, Defendants deny the
 10 allegations in paragraph 25.

11 26. Defendants deny that the allegations in paragraph 26 accurately state or
 12 characterize the allegations in any complaint or cross-complaint filed against
 13 Defendants in any action. Such complaints and cross-complaints speak for
 14 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 15 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 16 they are its own allegations. To the extent a response is required to MAIC's
 17 characterizations of others' allegations in other actions, Defendants lack information
 18 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 19 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 20 allegations. Defendants deny the remaining allegations in paragraph 26.

21 27. Defendants deny that the allegations in paragraph 27 accurately state or
 22 characterize the allegations in any complaint or cross-complaint filed against
 23 Defendants in any action. Such complaints and cross-complaints speak for
 24 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 25 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 26 they are its own allegations. To the extent a response is required to MAIC's
 27 characterizations of others' allegations in other actions, Defendants lack information
 28 sufficient to form a belief as to the truth or falsity of allegations pertaining to the

1 “NMS Entities,” who are not identified in the Complaint, and therefore deny such
 2 allegations. Defendants deny the remaining allegations in paragraph 27.

3 28. Defendants deny that the allegations in paragraph 28 accurately state or
 4 characterize the allegations in any complaint or cross-complaint filed against
 5 Defendants in any action. Such complaints and cross-complaints speak for
 6 themselves. To the extent a response is required to MAIC’s characterizations of
 7 others’ allegations in other actions, Defendants admit that various people and
 8 entities, including Defendants Neil and Margot Shekhter and Defendant NMS
 9 Capital Partners I, LLC filed a lawsuit captioned *Lincoln Studios LLC, et al v. DLA*,
 10 *et al.*, Case No. BC551551 in Los Angeles Superior Court in or about July 2014.
 11 Except as expressly admitted, Defendants deny the allegations in paragraph 28.

12 29. Defendants deny that the allegations in paragraph 29 accurately state or
 13 characterize the allegations in any complaint or cross-complaint filed against
 14 Defendants in any action. Such complaints and cross-complaints speak for
 15 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 16 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 17 they are its own allegations. To the extent a response is required to MAIC’s
 18 characterizations of others’ allegations in other actions, Defendants lack information
 19 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 20 “NMS Entities,” who are not identified in the Complaint, and therefore deny such
 21 allegations. Defendants lack information sufficient to form a belief as to the truth or
 22 falsity of the remaining allegations in paragraph 29, and therefore deny them.

23 30. Defendants deny that the allegations in paragraph 30 accurately state or
 24 characterize the allegations in any complaint or cross-complaint filed against
 25 Defendants in any action. Such complaints and cross-complaints speak for
 26 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 27 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 28 they are its own allegations. To the extent a response is required to MAIC’s

1 characterizations of others' allegations in other actions, Defendants admit that the
 2 complaint filed in the Lincoln Studios Action was amended twice. Defendants lack
 3 information sufficient to form a belief as to the truth or falsity of allegations
 4 pertaining to the "NMS Entities," who are not identified in the Complaint, and
 5 therefore deny such allegations. Except as expressly admitted, Defendants deny the
 6 allegations in paragraph 30.

7 31. Defendants deny that the allegations in paragraph 31 accurately state or
 8 characterize the allegations in any complaint or cross-complaint filed against
 9 Defendants in any action. Such complaints and cross-complaints speak for
 10 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 11 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 12 they are its own allegations. To the extent a response is required to MAIC's
 13 characterizations of others' allegations in other actions, Defendants admit that non-
 14 party P6 LA MF Holdings I, LLC, and others, filed a lawsuit captioned *P6 LA MF*
 15 *Holdings I LLC, et al v. NMS Properties, Inc.*, Case No. BC 584878 in or about June
 16 2015 in Los Angeles Superior Court. Except as expressly admitted, Defendants
 17 deny the allegations in paragraph 31.

18 32. Defendants deny that the allegations in paragraph 32 accurately state or
 19 characterize the allegations in any complaint or cross-complaint filed against
 20 Defendants in any action. Such complaints and cross-complaints speak for
 21 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 22 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 23 they are its own allegations. To the extent a response is required to MAIC's
 24 characterizations of others' allegations in other actions, Defendant NMS Properties,
 25 Inc. admits that non-party P6 LA MF Holdings SPE, LLC attempted to terminate it
 26 as property manager of certain properties on or about May 6, 2015 and that the
 27 purported termination is invalid. Except as expressly admitted, Defendants deny the
 28 allegations in paragraph 32.

1 33. Defendants deny that the allegations in paragraph 33 accurately state or
 2 characterize the allegations in any complaint or cross-complaint filed against
 3 Defendants in any action. Such complaints and cross-complaints speak for
 4 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 5 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 6 they are its own allegations. To the extent a response is required to MAIC's
 7 characterizations of others' allegations in other actions, Defendants lack information
 8 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 9 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 10 allegations. Defendants deny the remaining allegations in paragraph 33.

11 34. Defendants deny that the allegations in paragraph 34 accurately state or
 12 characterize the allegations in any complaint or cross-complaint filed against
 13 Defendants in any action. Such complaints and cross-complaints speak for
 14 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 15 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 16 they are its own allegations. To the extent a response is required to MAIC's
 17 characterizations of others' allegations in other actions, Defendants lack information
 18 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 19 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 20 allegations. Defendants deny the remaining allegations in paragraph 34.

21 35. Defendants deny that the allegations in paragraph 35 accurately state or
 22 characterize the allegations in any complaint or cross-complaint filed against
 23 Defendants in any action. Such complaints and cross-complaints speak for
 24 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 25 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 26 they are its own allegations. To the extent a response is required to MAIC's
 27 characterizations of others' allegations in other actions, Defendants deny the
 28 allegations in paragraph 35.

1 36. Defendants deny that the allegations in paragraph 36 accurately state or
 2 characterize the allegations in any complaint or cross-complaint filed against
 3 Defendants in any action. Such complaints and cross-complaints speak for
 4 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 5 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 6 they are its own allegations. To the extent a response is required to MAIC's
 7 characterizations of others' allegations in other actions, Defendants lack information
 8 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 9 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 10 allegations. Defendants deny the remaining allegations in paragraph 36, including
 11 those in footnote 1 to the Complaint.

12 37. Defendants deny that the allegations in paragraph 37 accurately state or
 13 characterize the allegations in any complaint or cross-complaint filed against
 14 Defendants in any action. Such complaints and cross-complaints speak for
 15 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 16 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 17 they are its own allegations. To the extent a response is required to MAIC's
 18 characterizations of others' allegations in other actions, Defendants deny the
 19 allegations in paragraph 37.

20 38. Defendants deny that the allegations in paragraph 38 accurately state or
 21 characterize the allegations in any complaint or cross-complaint filed against
 22 Defendants in any action. Such complaints and cross-complaints speak for
 23 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 24 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 25 they are its own allegations. To the extent a response is required to MAIC's
 26 characterizations of others' allegations in other actions, Defendants admit that the
 27 Court in the Lincoln Studios Action issued orders on or about September 8, 2015
 28 and October 6, 2015, which speak for themselves. Defendants lack information

1 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 2 “NMS Entities,” who are not identified in the Complaint, and therefore deny such
 3 allegations. Except as expressly admitted, Defendants deny the allegations in
 4 paragraph 38, including those in footnote 2 to the Complaint.

5 39. Defendants deny that the allegations in paragraph 39 accurately state or
 6 characterize the allegations in any complaint or cross-complaint filed against
 7 Defendants in any action. Such complaints and cross-complaints speak for
 8 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 9 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 10 they are its own allegations. To the extent a response is required to MAIC’s
 11 characterizations of others’ allegations in other actions, Defendants admit that a
 12 motion for terminating and other sanctions was filed in the Lincoln Studios Action
 13 on or about September 2015, that the motion was briefed, and that the Court
 14 conducted a hearing on the motion. Except as expressly admitted, Defendants deny
 15 the allegations in paragraph 39.

16 40. Defendants deny that the allegations in paragraph 40 accurately state or
 17 characterize the allegations in any complaint or cross-complaint filed against
 18 Defendants in any action. Such complaints and cross-complaints speak for
 19 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 20 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 21 they are its own allegations. To the extent a response is required to MAIC’s
 22 characterizations of others’ allegations in other actions, Defendants admit that non-
 23 party P6 LA MF Holdings SPE, LLC filed a cross-complaint against Defendant
 24 NMS Capital Partners I, LLC in the Lincoln Studios Action on or about November
 25 6, 2015. Except as expressly admitted, Defendants deny the allegations in
 26 paragraph 40.

27 41. Defendants deny that the allegations in paragraph 41 accurately state or
 28 characterize the allegations in any complaint or cross-complaint filed against

1 Defendants in any action. Such complaints and cross-complaints speak for
 2 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 3 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 4 they are its own allegations. To the extent a response is required to MAIC's
 5 characterizations of others' allegations in other actions, Defendants admit they or
 6 their attorneys sent one or more letters to one or more third parties, which speak for
 7 themselves, and that some such letters attached a copy of the Third Amended
 8 Complaint filed in the Lincoln Studios Action, which also speaks for itself. Except
 9 as expressly admitted, Defendants deny the allegations in paragraph 41.

10 42. Defendants deny that the allegations in paragraph 42 accurately state or
 11 characterize the allegations in any complaint or cross-complaint filed against
 12 Defendants in any action. Such complaints and cross-complaints speak for
 13 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 14 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 15 they are its own allegations. To the extent a response is required to MAIC's
 16 characterizations of others' allegations in other actions, Defendants admit that the
 17 Court in the Lincoln Studios Action issued an order in or about April 2016
 18 sustaining a demurrer to the Third Amended Complaint, which speaks for itself.
 19 Except as expressly admitted, Defendants deny the allegations in paragraph 42.

20 43. Defendants deny that the allegations in paragraph 43 accurately state or
 21 characterize the allegations in any complaint or cross-complaint filed against
 22 Defendants in any action. Such complaints and cross-complaints speak for
 23 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 24 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 25 they are its own allegations. To the extent a response is required to MAIC's
 26 characterizations of others' allegations in other actions, Defendants admit they or
 27 their attorneys sent one or more letters to one or more third parties, which speak for
 28 themselves. Defendants lack information sufficient to form a belief as to the truth or

1 falsity of allegations pertaining to the “NMS Entities,” who are not identified in the
 2 Complaint, and therefore deny such allegations. Except as expressly admitted,
 3 Defendants deny the allegations in paragraph 43

4 44. Defendants deny that the allegations in paragraph 44 accurately state or
 5 characterize the allegations in any complaint or cross-complaint filed against
 6 Defendants in any action. Such complaints and cross-complaints speak for
 7 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 8 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 9 they are its own allegations. To the extent a response is required to MAIC’s
 10 characterizations of others’ allegations in other actions, Defendants admit that the
 11 Court in the Lincoln Studios Action issued a tentative ruling on or about July 29,
 12 2016, which speaks for itself. Defendants lack information sufficient to form a
 13 belief as to the truth or falsity of allegations pertaining to the “NMS Entities,” who
 14 are not identified in the Complaint, and therefore deny such allegations. Except as
 15 expressly admitted, Defendants deny the allegations in paragraph 44.

16 45. Defendants deny that the allegations in paragraph 45 accurately state or
 17 characterize the allegations in any complaint or cross-complaint filed against
 18 Defendants in any action. Such complaints and cross-complaints speak for
 19 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 20 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 21 they are its own allegations. To the extent a response is required to MAIC’s
 22 characterizations of others’ allegations in other actions, Defendants admit that a
 23 hearing took place in the Lincoln Studios Action in or about October 2016 and that
 24 the Court signed an order on or about November 22, 2016, which speaks for itself.
 25 Defendants lack information sufficient to form a belief as to the truth or falsity of
 26 allegations pertaining to the “NMS Entities,” who are not identified in the
 27 Complaint, and therefore deny such allegations. Except as expressly admitted,
 28 Defendants deny the allegations in paragraph 45.

1 46. Defendants deny that the allegations in paragraph 46 accurately state or
 2 characterize the allegations in any complaint or cross-complaint filed against
 3 Defendants in any action. Such complaints and cross-complaints speak for
 4 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 5 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 6 they are its own allegations. To the extent a response is required to MAIC's
 7 characterizations of others' allegations in other actions, Defendants admit that one
 8 or more of them filed a complaint in Santa Monica Superior Court on or about
 9 December 1, 2016, which speaks for itself. Defendants lack information sufficient
 10 to form a belief as to the truth or falsity of allegations pertaining to the "NMS
 11 Entities," who are not identified in the Complaint, and therefore deny such
 12 allegations. Except as expressly admitted, Defendants deny the allegations in
 13 paragraph 46.

14 47. Defendants deny that the allegations in paragraph 47 accurately state or
 15 characterize the allegations in any complaint or cross-complaint filed against
 16 Defendants in any action. Such complaints and cross-complaints speak for
 17 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 18 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 19 they are its own allegations. To the extent a response is required to MAIC's
 20 characterizations of others' allegations in other actions, Defendants admit that the
 21 Court in the Lincoln Studios Action signed an amended default judgment on or
 22 about December 2, 2016, which speaks for itself. Defendants lack information
 23 sufficient to form a belief as to the truth or falsity of allegations pertaining to the
 24 "NMS Entities," who are not identified in the Complaint, and therefore deny such
 25 allegations. Except as expressly admitted, Defendants deny the allegations in
 26 paragraph 47.

27 48. Defendants deny that the allegations in paragraph 48 accurately state or
 28 characterize the allegations in any complaint or cross-complaint filed against

1 Defendants in any action. Such complaints and cross-complaints speak for
 2 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 3 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 4 they are its own allegations. To the extent a response is required to MAIC's
 5 characterizations of others' allegations in other actions, Defendants admit that the
 6 amended default judgment in the Lincoln Studios Action speaks for itself.
 7 Defendants lack information sufficient to form a belief as to the truth or falsity of
 8 allegations pertaining to the "NMS Entities," who are not identified in the
 9 Complaint, and therefore deny such allegations. Except as expressly admitted,
 10 Defendants deny the allegations in paragraph 48.

11 49. Defendants deny that the allegations in paragraph 49 accurately state or
 12 characterize the allegations in any complaint or cross-complaint filed against
 13 Defendants in any action. Such complaints and cross-complaints speak for
 14 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 15 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 16 they are its own allegations. To the extent a response is required to MAIC's
 17 characterizations of others' allegations in other actions, Defendants admit that the
 18 amended default judgment in the Lincoln Studios Action speaks for itself.
 19 Defendants lack information sufficient to form a belief as to the truth or falsity of
 20 allegations pertaining to the "NMS Entities," who are not identified in the
 21 Complaint, and therefore deny such allegations. Except as expressly admitted,
 22 Defendants deny the allegations in paragraph 49.

23 50. Defendants deny that the allegations in paragraph 50 accurately state or
 24 characterize the allegations in any complaint or cross-complaint filed against
 25 Defendants in any action. Such complaints and cross-complaints speak for
 26 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 27 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 28 they are its own allegations. To the extent a response is required to MAIC's

1 characterizations of others' allegations in other actions, Defendants admit that one
 2 or more of them has filed an appeal(s) in the Lincoln Studios Action and that the
 3 findings of the Court in that action are not final. Defendants deny filing an appeal in
 4 the Property Management Action, which has been stayed, or that the Court's
 5 "findings" in that action are non-final. Defendants lack information sufficient to
 6 form a belief as to the truth or falsity of allegations pertaining to the "NMS
 7 Entities," who are not identified in the Complaint, and therefore deny such
 8 allegations. Except as expressly admitted, Defendants deny the allegations in
 9 paragraph 50.

10 51. Defendants deny that the allegations in paragraph 51 accurately state or
 11 characterize the allegations in any complaint or cross-complaint filed against
 12 Defendants in any action. Such complaints and cross-complaints speak for
 13 themselves. To the extent a response is required to MAIC's characterizations of
 14 others' allegations in other actions, Defendants admit that one or more of them filed
 15 an opening brief in an appeal in the Lincoln Studios Action on or about April 12,
 16 2017. Except as expressly admitted, Defendants deny the allegations in paragraph
 17 51.

18 52. Defendants deny that the allegations in paragraph 52 accurately state or
 19 characterize the allegations in any complaint or cross-complaint filed against
 20 Defendants in any action. Such complaints and cross-complaints speak for
 21 themselves. Defendants further deny that MAIC has any proper basis under Rule 11
 22 of the Federal Rules of Civil Procedure to assert the allegations of others as though
 23 they are its own allegations. To the extent a response is required to MAIC's
 24 characterizations of others' allegations in other actions, Defendants admit that the
 25 complaint in the Federal RICO Action was filed on or about January 25, 2017, and
 26 that the complaint speaks for itself. Defendants lack information sufficient to form a
 27 belief as to the truth or falsity of allegations pertaining to the "others" against whom
 28 the complaint in the RICO Action purportedly was filed, and therefore deny such

1 allegations. Except as expressly admitted, Defendants deny the allegations in
 2 paragraph 52.

3 **MAIC'S COVERAGE POSITION**

4 53. Defendants deny that MAIC has accurately or completely set forth,
 5 interpreted, or characterized the excerpt of the “14-16 Policy” set forth in paragraph
 6 53, or any other provision of that policy, which speaks for itself.

7 54. The allegations in paragraph 54 of the Complaint are legal conclusions
 8 to which no response is required. To the extent a response is deemed necessary,
 9 Defendants deny the allegations in paragraph 54.

10 55. Defendants deny that MAIC has accurately or completely set forth,
 11 interpreted, or characterized the excerpt of the “16-17 Policy” set forth in paragraph
 12 55, or any other provision of that policy, which speaks for itself. The allegations in
 13 the first sentence of paragraph 55 of the Complaint are legal conclusions to which
 14 no response is required. To the extent a response is deemed necessary, Defendants
 15 deny the allegations in paragraph 55. Except as expressly admitted, Defendants
 16 deny the allegations in paragraph 55.

17 56. Defendants deny that MAIC has accurately or completely set forth,
 18 interpreted, or characterized the excerpt of the “16-17 Policy” or the “14-16 Policy”
 19 set forth in paragraph 56, or any other provision of those policies, which speak for
 20 themselves. Defendants admit that the Federal RICO Action and the SCRV Action
 21 are Claims under the 16-17 Policy. Except as expressly admitted, Defendants deny
 22 the allegations in paragraph 56.

23 57. Denied.

24 58. The allegations in paragraph 58 of the Complaint are legal conclusions
 25 to which no response is required. To the extent a response is deemed necessary,
 26 Defendants deny the allegations in paragraph 58.

27 59. The allegations in paragraph 59 of the Complaint are legal conclusions
 28 to which no response is required. To the extent a response is deemed necessary,

Defendants deny the allegations in paragraph 59.

2 60. The allegations in paragraph 60 of the Complaint are legal conclusions
3 to which no response is required. To the extent a response is deemed necessary,
4 Defendants deny the allegations in paragraph 60.

61. The allegations in paragraph 61 of the Complaint are legal conclusions
6 to which no response is required. To the extent a response is deemed necessary,
7 Defendants admit that NMS Capital Partners I, LLC is not named as an insured
8 under the 14-16 Policy or 16-17 Policy. Except as expressly admitted, Defendants
9 deny the allegations in paragraph 61.

10 62. The allegations in paragraph 62 of the Complaint are legal conclusions
11 to which no response is required. To the extent a response is deemed necessary,
12 Defendants deny the allegations in paragraph 62.

13 63. The allegations in paragraph 63 of the Complaint are legal conclusions
14 to which no response is required. To the extent a response is deemed necessary,
15 Defendants deny the allegations in paragraph 63.

16 64. The allegations in paragraph 64 of the Complaint are legal conclusions
17 to which no response is required. To the extent a response is deemed necessary,
18 Defendants lack information sufficient to form a belief as to the truth or falsity of
19 allegations pertaining to “various express exclusions of the Policies and California
20 law” not identified in the Complaint, and therefore deny them. Defendants deny the
21 remaining allegations in paragraph 64.

FIRST CLAIM FOR RELIEF

(Judicial Declaration Against All Defendants)

24 65. Defendants incorporate their responses to the foregoing paragraphs as
25 though set forth in full herein.

26 || 66. Denied.

27 67. Defendants admit that MAIC purports to petition the Court for a
28 judicial declaration. Defendants deny that MAIC is entitled to the judicial

1 declaration it seeks. Except as expressly admitted, Defendants deny the allegations
 2 in paragraph 67.

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of Contract Against NMS Properties, Neil Shekhter and
 5 Margot Shekhter)**

6 68. Defendants incorporate their responses to the foregoing paragraphs as
 7 though set forth in full herein.

8 69. Denied.

9 70. Defendants admit that the Policies set forth general terms and
 10 conditions, which speak for themselves. Defendants deny that MAIC has accurately
 11 or completely set forth, interpreted, or characterized the terms and conditions, or any
 12 other provision, of the Policies. Except as expressly admitted, Defendants deny the
 13 allegations in paragraph 70.

14 71. Denied.

15 72. Denied.

16 **SEPARATE AND AFFIRMATIVE DEFENSES**

17 Defendants hereby plead the following separate and affirmative defenses to
 18 the Complaint. By alleging the separate and affirmative defenses set forth below,
 19 Defendants intend no alteration of the burden of proof and/or burden of going
 20 forward with evidence that otherwise exists with respect to any particular issue at
 21 law or in equity. Furthermore, all such defenses are pleaded in the alternative, and
 22 do not constitute an admission of liability or that Plaintiffs are entitled to any relief
 23 whatsoever. Without limiting or waiving any defenses available to them, and based
 24 on information and belief unless otherwise stated, Defendants allege as follows:

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Failure to State a Claim)**

27 73. MAIC's Complaint, and each purported Claim for Relief therein, is
 28 barred, in whole or in part, because MAIC fails to allege facts sufficient to state a

1 claim upon which relief may be granted. In particular, and without limitation, there
 2 is no reasonable dispute, as is necessary for declaratory relief, regarding the
 3 existence of a potential for coverage for the various actions Defendants tendered to
 4 MAIC for a defense. MAIC admits the Actions are **Claims**, which fall within the
 5 coverage of one or both Policies. And its stated bases for denying coverage fail as a
 6 matter of law: California Insurance Code § 533 does not bar coverage for a defense
 7 of claims alleging intentional misconduct; and all actions, including those
 8 purportedly alleging **Interrelated Wrongful Acts**, were timely tendered to MAIC.
 9 Indeed, MAIC's Complaint alleges only that certain Actions were not timely
 10 tendered under the 14-16 Policy, but carefully avoids alleging that those Actions
 11 were not timely tendered under the 16-17 Policy. Furthermore, MAIC has not—and
 12 as a matter of law cannot have—suffered any damages, as is necessary to state a
 13 claim for breach of contract, from the alleged untimely tender of any action for a
 14 defense because MAIC refused to provide such defense and has also refused
 15 indemnity. Moreover, as noted above, MAIC does not allege any facts whatsoever
 16 showing breach of the 16-17 Policy's notice provision.

17 **SECOND AFFIRMATIVE DEFENSE**
 18 **(Bad Faith)**

19 74. MAIC's Complaint, and each purported Claim for Relief therein, is
 20 barred, in whole or in part, by MAIC's breach of the implied covenant of good faith
 21 and fair dealing, *i.e.*, its bad faith. In particular, and without limitation, MAIC's
 22 wrongful delay, failure and refusal to provide benefits to which Defendants are
 23 entitled under the insurance policies issued to them by MAIC has lost the right, if
 24 any, under those policies: (1) to control Defendants' defense of the Actions or to
 25 object to, allocate, or otherwise limit the costs of such defense; (2) to receive notice
 26 of proceedings in the Actions; (3) to challenge the matters adjudicated in the
 27 Actions; (4) to limit MAIC's liability for any settlement or judgment in the Actions
 28 to the contractual limits under the policies or object to such settlement or judgment

1 as presumptive evidence of liability and damages as against MAIC; and (5) to object
 2 to the purported untimely notice of the Actions, such notice plainly being futile.

3 **THIRD AFFIRMATIVE DEFENSE**

4 **(Waiver)**

5 75. MAIC's Complaint, and each purported Claim for Relief therein, is
 6 barred, in whole or in part, by the doctrine of waiver. In particular, and without
 7 limitation, by wrongfully refusing to defend Defendants against the Actions, despite
 8 full knowledge that there is a potential for coverage for the Actions under the
 9 policies MAIC issued to Defendants, MAIC waived the right, if any, under those
 10 policies: (1) to control Defendants' defense of the Actions or to object to, allocate,
 11 or otherwise limit the costs of such defense; (2) to receive notice of proceedings in
 12 the Actions; (3) to challenge the matters adjudicated in the Actions; (4) to limit
 13 MAIC's liability for any settlement or judgment in the Actions to the contractual
 14 limits under the policies or object to such settlement or judgment as presumptive
 15 evidence of liability and damages as against MAIC; and (5) to object to the
 16 purported untimely notice of the Actions, such notice plainly being futile.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 **(Estoppe)**

19 76. MAIC's Complaint, and each purported Claim for Relief therein, is
 20 barred, in whole or in part, by the doctrine of estoppel. In particular, and without
 21 limitation, MAIC admits, in the Complaint itself and/or in its coverage
 22 correspondence, that (1) (at least) the "Federal RICO Action and the SCRV Action
 23 are Claims under the 16-17 Policy"; (2) the allegations in the Property Management
 24 Action for which Defendants sought a defense from MAIC first appeared in an
 25 amended complaint filed on or about March 11, 2016, within the Policy Period of
 26 the 16-17 Policy; (3) Defendants timely tendered each of the foregoing Actions
 27 within the Policy Period of the 16-17 Policy; and (4) MAIC refused to defend those
 28 actions. MAIC is estopped to deny the foregoing admissions which, among other

1 things, negate one or more allegations in MAIC's Complaint and/or elements of
 2 MAIC's claims for relief.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Unclean Hands)**

5 77. MAIC's Complaint, and each purported Claim for Relief therein, is
 6 barred, in whole or in part, by the doctrine of unclean hands. In particular, and
 7 without limitation, MAIC's declaratory relief claim is barred by its bad faith and
 8 violations of law, including Cal. Ins. Code § 790.03, which include, among other
 9 things misrepresenting pertinent facts and/or provisions of the Policies relating to
 10 any coverages at issue; (2) failing to acknowledge and act reasonably promptly upon
 11 communications with respect to claims arising under the Policies; (3) failing to
 12 adopt and implement reasonable standards for the prompt investigation and
 13 processing of claims arising under the Policies; and (4) compelling insureds to
 14 institute litigation to recover amounts due under the Policies.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 78. MAIC's Complaint, and each purported Claim for Relief therein, is
 18 barred, in whole or in part, by MAIC's failure to mitigate its purported damages. In
 19 particular, and without limitation, MAIC failed to defend Defendants against the
 20 Actions, under a reservation of rights or at all, even though there is a potential for
 21 coverage under the policies MAIC issued to Defendants. As a result, MAIC lost the
 22 right, if any, under the policies MAIC issued to Defendants: (1) to control
 23 Defendants' defense of the Actions or to object to, allocate, or otherwise limit the
 24 costs of such defense; (2) to receive notice of proceedings in the Actions; (3) to
 25 challenge the matters adjudicated in the Actions; (4) to limit MAIC's liability for
 26 any settlement or judgment in the Actions to the contractual limits under the policies
 27 or object to such settlement or judgment as presumptive evidence of liability and
 28 damages as against MAIC; and (5) to object to the purported untimely notice of the

1 Actions, such notice plainly being futile.

2 **RESERVATION OF ADDITIONAL DEFENSES**

3 79. The Complaint does not describe the events or claims therein with
4 sufficient particularity and/or in a sufficiently coherent manner to enable Defendants
5 to determine all of the defenses which may exist to such events and claims.
6 Defendants therefore reserve their rights to add, delete, or modify any and all
7 defenses which may pertain to the Complaint when and if the precise nature of such
8 events and claims is determined through clarification or amendment of the
9 Complaint, through discovery, through further legal analysis of Defendants' claims
10 and positions in this litigation, or otherwise.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendants respectfully request that the Court enter judgment for
13 Defendants and against MAIC, as follows:

14 A. That MAIC take nothing by its Complaint;
15 B. That Defendants be awarded their attorneys' fees and costs of suit; and
16 C. That Defendants be awarded such other and further relief as the Court
17 deems proper.

18 **DEMAND FOR JURY TRIAL**

19 Defendants hereby demand a trial by jury under Fed. R. Civ. Proc. 38(a).

21 DATED: June 9, 2017

22 Respectfully submitted,

23 **MILLER BARONDESS, LLP**

24 By: /s/ Louis R. Miller

25 LOUIS R. MILLER

26 Attorneys for Defendants

27 NMS Properties, Inc.; NMS Capital

28 Partners I, LLC; Neil Shekhter; and

Margot Shekhter

**COUNTERCLAIMS OF NMS PROPERTIES, INC.; NEIL SHEKHTER;
AND MARGOT SHEKHTER**

Counter-claimants NMS Properties, Inc. (“NMS Properties”); Neil Shekhter; and Margot Shekhter (collectively, “Counter-claimants”) hereby assert the following counterclaims against Plaintiff and Counter-defendant Markel American Insurance Company (“MAIC”):

INTRODUCTION

8 1. These counter-claims arise out of MAIC’s unreasonable and wrongful
9 delay and refusal to defend or indemnify Counter-claimants against various claims,
10 complaints, cross-complaints and counter claims in connection with: *P6 LA MF*
11 *Holdings SPE, LLC v. NMS Properties, Inc., et al.*, C.D. Cal. Case No. 2:17-cv-
12 00616-RGK-SS (Hon. Gary Klausner) (the “RICO Action”); *Neil Shekhter, et al. v.*
13 *Dennis J. Wong, et al.*, L.A.S.C. Case No. SC126760 (Hon. Gerald Rosenberg) (the
14 “SCRV Action”); and *P6 LA MF Holdings SPE, LLC v. NMS Properties, Inc.,*
15 L.A.S.C. Case No. (Hon. Michael Johnson) (the “Properties Action”). The
16 foregoing lawsuits are referred to collectively herein as the “Actions.” The
17 plaintiffs, counter-complainants and cross-complainants in the Actions are referred
18 to collectively herein as “Claimants.”

JURISDICTION, VENUE AND PARTIES

20 2. The Court has supplemental jurisdiction over Counter-claimants'
21 counter-claims pursuant to 28 U.S.C. § 1337(a).

22 3. MAIC has consented to venue in this Court by filing suit against
23 Counter-claimants here.

24 4. Counter-claimant NMS Properties is a California corporation with its
25 principal place of business in Santa Monica, California.

26 5. Counter-claimant Neil Shekhter is, and at all times relevant to these
27 Counter-claims was, an individual residing in Los Angeles County, California.

28 6. Counter-claimant Margot Shekhter is, and at all times relevant to these

Counter-claims was, an individual residing in Los Angeles County, California.

7. On information and belief, Counter-claim Defendant MAIC is, and at all times relevant to these Counter-claims was, a Virginia corporation with its principal place of business Glen Allen, Virginia.

FACTS

8. In exchange for valuable consideration, MAIC provided policies of insurance to Counter-claimants, including without limitation, Directors and Officers (“D&O) and Company Liability Insurance under written insurance policies ML815313 (effective September 28, 2014 to January 28, 2016) (the “14-16 Policy”) and ML820285 (effective January 28, 2016 to March 29, 2017) (the “16-17 Policy”). The 14-16 Policy (a renewal of policy ML810410) and the 16-17 Policy (a renewal of the 14-16 Policy), are collectively referred to herein as the “Policies.”

9. At all times, Counter-claimants paid all premiums on Policies as they became due and payable, and has duly complied with all material conditions in the Policies, except for those conditions which have been waived or excused by MAIC.

10. The Policies promise coverage for, among other things:

A. INSURED PERSON LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against **Insured Persons**, individually or otherwise, during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act** taking place before or during the **Policy Period**;

B. COMPANY REIMBURSEMENT COVERAGE

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons**, as permitted or required by law, and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against **Insured Persons**, individually

1 or otherwise, during the **Policy Period** or the **Extended Reporting Period**, if
 2 exercised, for a **Wrongful Act** taking place before or during the **Policy Period**;
 3 and

4 **C. COMPANY LIABILITY COVERAGE**

5 The Insurer shall pay on behalf of the **Company** all **Loss** which the **Company**
 6 becomes legally obligated to pay on account of any **Claim** first made against the
 7 **Company** during the **Policy Period** or the **Extended Reporting Period**, if
 8 exercised, for a **Wrongful Act** taking place before or during the **Policy Period**.

9 11. The Policies also provide that “[t]he **Insurer** shall have the right and
 10 duty to defend any **Claim** covered under such **Coverage Part**, even if any of the
 11 allegations are groundless, false or fraudulent.”

12 12. The Policies define **Loss** as, among other things, “the total amount the
 13 **Insured** becomes legally obligated to pay on account of covered **Claims** made
 14 against them, including, but not limited to, damages (including punitive, exemplary
 15 or multiple damages), judgments, any award of pre-judgment and post-judgment
 16 interest with respect to covered damages, settlements, **Claim Expenses**....”

17 13. The Policies define a **Claim** as, among other things, “a civil proceeding
 18 against any **Insured** commenced by the service of a complaint or similar pleading
 19 upon such **Insured**.”

20 14. The Policies define a **Wrongful Act** as, among other things, “any
 21 actual or alleged error, misstatement, misleading statement, act, omission, neglect,
 22 or breach of duty by any **Insured Person** in their capacity as such ... or with respect
 23 to Insuring Agreement C, by the **Company**....”

24 15. The Policies define an **Insured** as “the **Insured Persons** and, solely
 25 with respect to Insuring Agreement B, Insuring Agreement C and Insuring
 26 Agreement D, the **Company**.”

27 16. The Policies define an **Insured Person** as, among other things, “any
 28 natural person who was, now is or shall during the **Policy Period** become a duly

1 elected or appointed director, trustee, governor, **Manager**, officer, advisory director,
 2 or member of a duly constituted committee or board of the **Company** or their
 3 functional equivalent.”

4 17. The Policies define the **Company** as NMS Properties, Inc. NMS
 5 Properties, therefore, is an Insured. As officers of NMS Properties, Neil and Margot
 6 Shekhter are Insured Persons.

7 18. The Actions are Claims, as defined above; namely, “civil proceeding[s]
 8 against any **Insured** commenced by the service of a complaint or similar pleading
 9 upon such **Insured**.” In particular, NMS Properties is a defendant or cross-claim
 10 defendant in all three of the Actions while Neil and Margot Shekhter are defendants
 11 or cross-claim defendants in the RICO Action and SCRV Action.

12 19. The Actions seek damages and other costs, as well as injunctive relief,
 13 from Cross-complainants as a result of various alleged **Wrongful Acts** including,
 14 among other things, that one or more Cross-complainants:

- 15 • Sent misleading emails to representatives of the Claimants, third-
 16 party lenders, auditors, property managers, title insurance
 17 companies, potential buyers, former employees, counsel, and
 18 others;
- 19 • Filed, prosecuted or threatened allegedly “sham” litigation
 20 against the Claimants or various third parties;
- 21 • Misrepresented themselves as the manager of certain properties
 22 purportedly belonging to the Claimants;
- 23 • Unlawfully collected rents from the foregoing properties,
 24 trespassed on the properties, and/or preventing the Claimants
 25 from accessing the properties;
- 26 • Wrongfully withheld or destroyed books and records purportedly
 27 belonging to the Claimants;
- 28 • Made false or reckless statements purportedly casting doubt upon

the Claimants' ownership of the properties;

- Made misleading or defamatory statements or omissions that purportedly induced third parties not to consummate economic relations with the Claimants; and
- Spoliated evidence.

6 20. Counter-claimants timely provided notice of, and tendered, the Actions
7 to MAIC. As MAIC admits in its Complaint, Counter-claimants provided notice of
8 the SCRV Action no later than January 10, 2017; of the RICO Action no later than
9 January 27, 2017; and of the Properties Action no later than March 24, 2017, each of
10 which is within the Policy Period of the 16-17 Policy. In addition, pleadings in the
11 SCRV Action and RICO Action, which Counter-claimants provided to MAIC with
12 notice of those Actions, describe the Properties Action in detail.

13 21. Despite having an acknowledged duty to defend Counter-claimants,
14 MAIC wrongfully delayed, denied and refused, and continues to wrongfully delay,
15 deny and refuse, to defend Counter-claimants or to pay the costs of their defense.
16 Consequently, Counter-claimants have been forced to defend themselves and pay
17 the costs of that defense out of their own pockets, without reimbursement from
18 either of the Policies.

19 22. MAIC's denials of coverage were unjustified. Solely by way of
20 example:

- MAIC based its refusal to defend Counter-claimants in the SCRV Action solely on an exclusion in the 16-17 Policy for Claims involving the rendering or failure to render “professional services” (*i.e.*, malpractice), even though the cross-complaint in the SCRV Action does not allege such conduct, but rather alleges false and misleading statements regarding the right to own and possess certain real and personal property, and theft of and trespass on such property.

- 1 • MAIC denied coverage for, and refused to defend the RICO and
 2 Properties Actions, on the asserted ground that the complaint in
 3 that case alleged only intentional misconduct that Ins. Code §
 4 533 prohibited MAIC from defending, even though (1) the text
 5 of section 533, and established California law interpreting the
 6 provision, limit its application solely to an insurer's obligation to
 7 *indemnify* and not its duty to defend; (2) the Policies expressly
 8 promise a defense against Claims alleging willful, intentional
 9 misconduct pending a final, non-appealable judgment; and (3)
 10 the allegations in the RICO Action encompass conduct that is
 11 *less than* willful and intentional;
- 12 • MAIC also denied coverage for, and refused to defend the RICO
 13 and Properties Actions, on the asserted ground that the claims are
 14 related to the cross-complaint in another action—the Lincoln
 15 Studios Action—that MAIC contends was not timely tendered,
 16 even though the cross-complaint was against a party MAIC itself
 17 contends is not an insured under the Policies and therefore had
 18 no obligation to tender the action at all.
- 19 • MAIC further denied coverage for the Properties Action on the
 20 asserted ground that the admittedly timely tendered amended
 21 complaint for which Cross-complainants seek a defense “relates
 22 back” to the original complaint, even though that complaint does
 23 not contain allegations triggering a duty to tender such that
 24 MAIC would have denied coverage.
- 25 • MAIC has attacked its insured on two fronts, causing their
 26 complaint to be transferred to the same Court in which Counter-
 27 claimants are defending against the underlying RICO Action that
 28 MAIC was asked to defend.

1 • After rushing to sue its insureds, MAIC has sought to maximize
2 the prejudice to them by assuming, and seeking in this case to
3 prove, the truth of the claims Cross-complainants asked MAIC to
4 defend, and refusing Cross-complainants' reasonable request to
5 await the Court's resolution of those claims (which are the
6 subject of three pending dispositive motions) before litigating
7 overlapping coverage issues.

- In a bid to intimidate Cross-complainants into foregoing insurance coverage to which they are entitled, MAIC brought a damages claim against its insureds for alleged “breach” of the Policies’ notice provisions, even though MAIC *denied* coverage and has paid *nothing* under the Policies.
- In yet another bid to intimidate Cross-complainants into foregoing insurance coverage to which they are entitled, MAIC threatened, without justification, to seek to disqualify Cross-complainants’ counsel in this case.

17 23. The Actions continue to be litigated by and among the parties, and
18 various of the parties have, from time to time, engaged in settlement discussions
19 regarding all or part of the Actions. Because a final judgment has not yet been
20 entered resolving the Actions, Counter-claimants' claims against MAIC have been,
21 and remain, tolled under California law.

22 24. From and after the tender of the Actions to MAIC, Counter-claimants
23 have incurred, and continue to incur, defense costs necessary to avoid and/or
24 minimize Counter-claimants' potential liability in any of the Actions.

FIRST CAUSE OF ACTION

(Breach of Contract – Failure to Defend)

27 25. Counter-claimants re-allege and incorporate each of the foregoing
28 paragraphs of their counter-claims as though set forth in full herein.

1 26. MAIC has breached its contractual obligations under the Policies issued
2 by MAIC to Counter-claimants, including MAIC's duty to defend Counter-
3 claimants against the Actions by, among other things, denying coverage for,
4 delaying, refusing and failing to pay Counter-claimants' defense costs incurred with
5 respect to, the Actions.

6 27. As a direct and proximate result of MAIC's breaches of contract as
7 alleged herein, Counter-claimants have been required to defend themselves against
8 the Actions and to incur, agree to pay or pay the costs of that defense without
9 reimbursement. Counter-claimants have thereby been damaged in an amount to be
10 determined at trial, which damages include, without limitation, unreimbursed
11 defense costs incurred in connection with responding to and defending against the
12 Actions, together with interest thereon.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

15 28. Counter-claimants re-allege and incorporate each of the foregoing
16 paragraphs of their counter-claims as though set forth in full herein.

17 29. MAIC has breached the implied covenant of good faith and fair dealing
18 by, among other things: (1) wrongfully and unreasonably denying its full duty to
19 defend Counter-claimants against the Actions, including wrongfully and
20 unreasonably refusing to pay for defense costs incurred by Counter-claimants in
21 connection therewith; (2) compelling the insureds to institute litigation to obtain
22 coverage and recover amounts due under the MAIC Policies; (3) failing to adopt and
23 implement reasonable standards for the handling of claims; (4) taking unreasonable
24 positions, including in litigation, concerning the coverage provided under MAIC's
25 Policies; (5) misrepresenting the coverage provided by the Policies; (6) wrongfully
26 elevating MAIC's own interests over those of Counter-claimants; and (7) suing its
27 own insureds and causing the case to be transferred to the same Court where
28 Counter-claimants are defending the underlying RICO Action MAIC should be

defending, thereby attacking Counter-claimants on two fronts.

30. As a direct and proximate result of MAIC's breaches of its duties of good faith and fair dealing as set forth above, Counter-claimants have suffered damages, plus interest, together with all of its attorneys' fees and costs incurred in prosecuting this action to seek insurance coverage benefits wrongfully withheld by MAIC.

31. MAIC's unjustified and unreasonable conduct was calculated to deprive Counter-claimants of the benefits of their bargain, with resulting harm to Counter-claimants. MAIC's breaches of its duty of good faith and fair dealing were done with a conscious disregard of Counter-claimants' rights and with the intent to vex, injure or annoy Counter-claimants so as to constitute oppression or malice. Counter-claimants are therefore entitled to exemplary damages to punish and make an example of MAIC.

PRAYER FOR RELIEF

WHEREFORE, Counter-claimants respectfully request that the Court enter judgment for Counter-claimants and against MAIC, as follows:

A. For compensatory damages, including all of Counter-claimants' unreimbursed defense costs incurred in responding to and defending against the Actions, and any other benefits due under the Policies;

B. For foreseeable consequential damages, in an amount to be proven at trial;

C. For all other damages proximately caused by MAIC's bad faith, in an amount to be proven at trial;

D. For exemplary and punitive damages;

E. For interest as allowed by law;

F. For Counter-claimants' attorneys' fees and costs of suit in this action;

and

G. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Counter-claimants hereby demand a trial by jury on all counter-claims to which they are entitled to a jury.

DATED: June 9, 2017

Respectfully submitted,

MILLER BARONDESS, LLP

By: /s/ Louis R. Miller

LOUIS R. MILLER
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067.

On June 9, 2017, I served true copies of the following document(s) described as:

ANSWER TO COMPLAINT; COUNTERCLAIM

on the interested parties in this action as follows:

SERVICE LIST

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Counter-Defendant*

Markel American Insurance Company

BY CM/ECF: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 9, 2017, at Los Angeles, California.

John F. Pach
John F. Pach

John B. Park